

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

BOTHENTA KHEMISI

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Justice M.L. Lehohla
on the 6th day of September, 1990

The appellant received a sentence of four years' imprisonment after being convicted on a charge of Culpable Homicide in the Court below.

He appealed to this Court against both conviction and sentence.

This Court dismissed the appeal against conviction and upheld part of the appeal against sentence to the extent that the sentence was reduced to two years' imprisonment.

The following are the reasons for that decision:-

The appellant's father who was not cross-examined at the end of his evidence-in-chief told the Court below that on the day of the events i.e. 1-6-89 the appellant told him that he had assaulted someone whom he found at his house. This someone turned out to be the deceased. The events took place at night.

There was further evidence which was not challenged that the appellant reported to his chief that he had assaulted somebody at

the appellant's house.

Following this report the chief hurried to the appellant's home where the deceased lay dead.

The weapon used to inflict the injury was an iron bar. The location of the injuries was the deceased's head.

Medical evidence showed that the cause of the injuries would be consistent with use of a blunt instrument which is heavy or applied with great force. The resultant injury was consistent with a heavy blow on the head.

In a confession made before the Magistrate the appellant stated that his wife and a man were speaking in an unlit bedroom. The appellant announced his presence and when the wife opened the door the deceased ran out and was followed by the appellant till the deceased tripped and fell on a heap of sand a few yards away from the appellant's house. The appellant assaulted him. The deceased tried to defend himself but it appears the appellant gave him no quarter.

Even under cross-examination in the evidence in which the appellant sought to improve on his confession or even tried to renege on it he reluctantly conceded that he assaulted the deceased first. It seems the deceased was in fact surprised to have been assaulted for the text goes :-

"Are you aware that when this man got out of the house he was not fighting but he was leaving.....?"

I am saying he came to fight.

Why did he run away if he came to fight according to you as the result of which he bumped on the sand.....?

He ran away because he was not aware that I would assault him first".

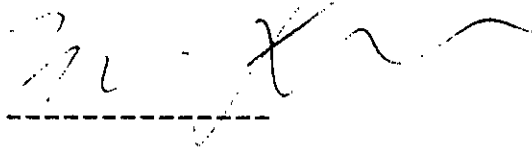
In considering sentence this Court took the view that the appellant not being aware that the deceased's behaviour culminating in the appellant's wife ordering him to leave was in large measure prompted by drink. The deceased and the appellant's wife were not lovers.

The appellant's jealousy fed on him to the extent that even though the house in which his wife and the deceased were was not in total darkness as there was a candle light in the kitchen on whose door the appellant knocked, he set his mind on assaulting the man whose voice he had heard while outside.

The appellant's behaviour immediately after the assault was consistent with that of a remorseful person. He confessed to his father. He told the chief about what happened and did not through his lawyer try to challenge the evidence of these two witnesses even though it served to connect him with the offence. He didn't waste the Court's time because he knew their evidence was true.

The appellant was a first offender. Account being taken of the above considerations the sentence imposed by the Court below

appears to err on the side of severity.

A handwritten signature in cursive script, appearing to be 'M. Teele', written over a horizontal dashed line.

J U D G E

For Appellant : Mr. Teele

For Respondent : Mr. Thetsane